

TITLE 329 SOLID WASTE MANAGEMENT BOARD

#06-70 (SWMB)

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE SECOND PUBLIC HEARING

On November 18, 2009, the Solid Waste Management Board (board) conducted the second public hearing/meeting concerning the solid waste processing facilities rule. This hearing was continued and then renoticed. Comments were made at the second hearing/meeting by the following:

Bill Paraskevas, Chairman, Indiana Facilities Committee,
National Solid Waste Management Association (NSWMA)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: 1. The definition of “adjoining land” incorrectly references the “solid waste boundary” and requires clarification for adjoining roads. (NSWMA)

Response: The requested change has been proposed.

Comment: 2. The definition of “Contingency Action Plan” should be amended to recognize all types of processing facilities. (NSWMA)

Response: The requested change has been proposed.

Comment: 3. The definition of “current closure cost estimate” and “current post closure cost estimate” need to be clearly written specifically for a transfer station. Also, IDEM does not have statutory authority to require financial assurance for any solid waste processing facility other than a transfer station. (NSWMA)

Response: The department does not agree that it is without statutory authority to require other solid waste processing facilities to have financial assurance. The solid waste management board has the responsibility to protect the citizens by regulating the facilities that have the potential to pollute. This was given to the board under IC 13-19-3-1 when the board was established. However, clarifications were made by deleting both definitions mentioned by the commentor.

Comment: 4. The definition of “operating day” incorrectly references days open for waste disposal. (NSWMA)

Response: This requested change has been proposed.

Comment: 5. The exclusions incorrectly exclude only certain types of waste disposal activities; all waste disposal should be excluded from the processing rules. (NSWMA)

Response: The department agrees that clarification is necessary and has made changes to the section.

Comment: 6. The proposed additional provisions allowing denial of a permit found at 329 IAC 11-9-1(c)(3) and (4) should not be adopted. The language proposed would allow the agency to deny a permit based on the occurrence of only one violation. (NSWMA)

Response: The reference to “one (1) or more” is being deleted. In addition, the entire section must be read to understand the level that non-compliance must reach in order for the agency to deny a permit. It is not just that a “history of violations”, can result in permit denial or additional conditions be placed on a permit, but a “history of violations” that “demonstrate the applicant’s inability or unwillingness to process the solid waste under requirements of this article or a facility permit”. However, (C)(4) has been deleted.

Comment: 7. The permit applications requirements for demonstrating zoning should be same as those for disposal found at 329 IAC 10-11-2.5(a)(6).

Response: A change will be made to replace “certification verification” with the word “**documentation**”. IDEM is also deleting “or the county commissioners if there is no zoning authority”.

Comment: 8. The permit revocation modification rule should be amended or rewritten. (NSWMA)

Response: IDEM does not agree that the section should be rewritten. The current wording provides the greatest flexibility to the commissioner to either revoke or modify based on the particular circumstances a site may present. While there are no specific locational standards in this rule, the commissioner is given authority to take appropriate steps to protect the environment. If a locational feature developed, such as a sinkhole, that compromised the integrity of the waste handling area then the commissioner should be able to take actions relative to the permit to assure the environmental is protected.

Comment: 9. Preoperational requirements--- rule requirements for financial assurance should be limited to transfer stations. (NSWMA)

Response: This requirement is in existing permits and rules. The department is not considering any changes. The department does not agree that it is without statutory authority to require other solid waste processing facilities to have financial assurance. The solid waste management board has the responsibility to protect the citizens by regulating the facilities that have the potential to pollute. This was given to the board under IC 13-19-3-1 when the board was established.

Comment: 10. The operational requirement to not create unsightliness is vague and unenforceable. (NSWMA)

Response: The department is proposing a change in the language to clarify this requirement. The word “unsightliness” is being changed to “a pollution hazard” as referenced in IC 13-30-2-1(3).

Comment: 11. The exclusion from requirements for an enclosed building with doors should be extended to existing facilities that have 3-sided structures. (NSWMA)

Response: The rule will be changed to include the word “enclosed” before the word “building” as the commentor suggests.